

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

MAY 5 1935

Date:

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

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Release copies to District

Dear Applicant:

Date 6/21/95

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of [REDACTED] on [REDACTED]. Your articles of incorporation were amended on [REDACTED].

As stated in your amended articles, in part, your purposes are:

"...to function and act as an association of real estate and/or facilities owners, managers, and developers and as such to coordinate, promote and assist in the activities, interests, and objectives of real estate and/or facilities owners and developers in order to improve the business conditions for these owners and developers".

You were created by [REDACTED], who has been the only director for your organization. He is currently the only officer for your organization as well. You have no plans to select additional directors and officers in the immediate future. Currently, you do not have an executive director, although an individual, [REDACTED], served in that capacity as an independent contractor from [REDACTED] to [REDACTED].

Although you have been in existence since [REDACTED], no activities were conducted until [REDACTED]. You began soliciting members for the organization in that year. You represent that you currently have [REDACTED] industry members and [REDACTED].

affiliated members. [REDACTED] of the industry members have received complimentary memberships. Only [REDACTED] industry members and all affiliated members have paid dues.

The only activities you have engaged in since your formation have been publishing a newsletter and conducting a [REDACTED]-day seminar in [REDACTED]. You have represented that [REDACTED] individuals representing [REDACTED] companies attended the seminar and that most of them attended on a complimentary basis. You have represented that, in the future, the organization may also conduct discussion groups, forums, and panels to educate your members on pertinent issues in the construction industry. You also may publish, distribute, buy and sell books "dealing with every kind of activity having to do with the creation and distribution of intellectual material." You anticipate that your income will derive from membership dues, publications, seminars, and donations.

[REDACTED] devoted an unspecified amount of time to increasing your membership base. This activity was conducted pursuant to [REDACTED] different contracts with your organization. The contracts provided that she, as an independent contractor, receive commissions based on a percentage of the organization's annual revenues. You have submitted financial data indicating that, during the year [REDACTED], the organization's income from membership dues was \$[REDACTED] and that you paid the executive director \$[REDACTED] in commissions. The organization's other source of income derived from loans from [REDACTED] and one of his consulting companies, [REDACTED].

[REDACTED] has provided office space and staff assistance to your organization free of charge. [REDACTED] also provided secretarial and reproduction assistance in connection with the [REDACTED] seminar.

[REDACTED], a publishing company specializing in the construction field and owned by [REDACTED], published your newsletter. You have no written agreement with that entity.

Section 501(c)(6) of the Internal Revenue Code provides for the exemption from federal income tax of "[b]usiness leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of the Income Tax Regulations provides, in part, that "a business league is an association of persons having some common business interest, the purpose of

which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league."

Section 8.01 of Rev. Proc. 94-4, 1994-1 I.R.B. 458, provides that the Service may decline to issue a ruling or a determination letter whenever warranted by the facts or circumstances of a particular case.

Section 5.01 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that a determination letter will be issued to an organization only when its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Section 5.02 of Rev. Proc. 90-27 provides that exempt status "will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed.... The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities.... Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded."

Rev. Rul. 59-391, 1959-2 C.B. 151, held that an organization which restricts its membership to individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession and which is organized for the purpose of exchanging information on business prospects, its members having no common business interest other than a desire to increase their individual sales, is not entitled to exemption under section 501(c)(6) of the Code as a business league.

Rev. Rul. 70-641, 1970-2 C.B. 119, held that an organization composed of individuals from various professions in the field of public health and welfare, organized to develop greater efficiency in the professions and solve common problems qualified for exemption under section 501(c)(6) of the Code.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under section 501(a) of the Code, regardless of the number or importance of its exempt purposes.

During the [REDACTED] years that you have been in existence, you have only published one newsletter and held one seminar. Both of these activities were primarily conducted by for-profit entities owned by [REDACTED], the director and founder of your organization. Although you state that other activities may be carried on, you are unable to provide details regarding how the programs and activities will be conducted. As such, the facts in the administrative file are insufficient to make a determination that you have the characteristics of a business league within the meaning of section 501(c)(6) of the Code.

You represent that you have a substantial membership comprising of owners and developers of real estate, yet most of your members do not pay dues. You have not demonstrated that your members share any common business interest other than a need for the services provided by [REDACTED]'s companies. Thus, you have not demonstrated that you are like the organization described in Rev. Rul. 70-641, supra, rather than the one in Rev. Rul. 59-391, supra.

The administrative file indicates that you are closely associated with [REDACTED] and [REDACTED], both for-profit organizations associated with the construction field and controlled by [REDACTED], the same person that controls your organization. You have engaged in transactions with these related organizations, and your file indicates that these arrangements will continue in the future. Since you are controlled by the same person as [REDACTED] and [REDACTED], it is unclear how these transactions will be at arm's-length and will not serve the private interest of [REDACTED] and his companies.

Furthermore, the financial data in your file indicates that all of your [REDACTED] dues income was paid to [REDACTED], in the form of commissions. You have stated that these payments were made as compensation for bringing in new members to your organization,

yet you are unable to state how much time she devoted to this activity or describe her other duties. Thus, you have not demonstrated that the arrangements did not serve the private interest of [REDACTED] and that the payments were reasonable based on the services she performed for your organization. Therefore, based on the arrangements with [REDACTED]'s companies and [REDACTED], you have not established that your activities will not serve a substantial non-exempt purpose of serving the private interests of commercial interests, organizations and individuals as prohibited by Better Business Bureau, supra.

Based on the foregoing, we hold that you have failed to establish that you are exempt from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns on Form 1120.

You have a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

1111 Constitution Ave., N.E.  
Washington, D.C. 20224

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Technical Branch 4

cc: [REDACTED]

cc: [REDACTED]